

STATE OF SOUTH CAROLINA

**ORIGINAL**

IN THE SUPREME COURT

Appeal from Sumter County

Howard P. King, Circuit Court Judge

**RECEIVED**

APR 19 2012

**S.C. Supreme Court**

THE STATE,

RESPONDENT,

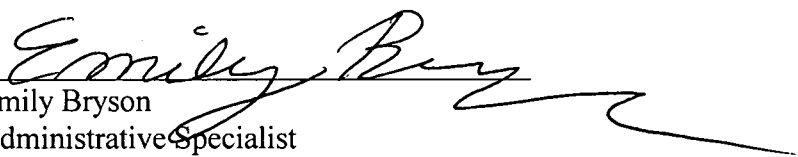
V.

MARCUS EVANS,

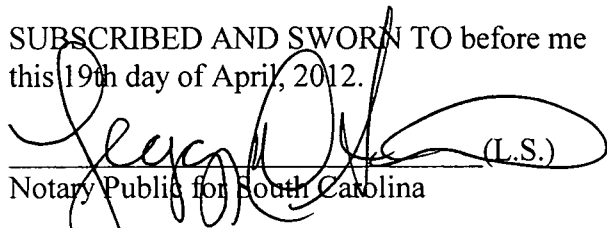
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Mary S. Williams, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of April, 2012.

  
Emily Bryson  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 19th day of April, 2012.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: December 4, 2017

# The Supreme Court of South Carolina

The State, Respondent,  
v.  
Marcus Evans, Appellant.

Appellate Case No. 2010-178426

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## ORDER

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The request for an extension to serve and file the record on appeal is granted and extended until April 20, 2012. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009, any further extension request must be based on a showing of good cause.

JEAN H. TOAL, CHIEF JUSTICE

BY *Freeda J. Shealy*  
*Chief Deputy* CLERK

Columbia, South Carolina

April 19, 2012

cc: Mary Shannon Williams  
LaNelle Cantey DuRant



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

April 18, 2012

RECEIVED

APR 18 2012

The Honorable Daniel E. Shearouse  
Clerk of Court, S.C. Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

S.C. Supreme Court

Re: The State v. Marcus Evans

Dear Mr. Shearouse:

The Record on Appeal in this case is due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting an extension for two (2) days until Friday, April 20, 2012, in which to serve and file the record.

By copy of this letter, I am informing Mary S. Williams, of the Attorney General's Office, of my request.

Sincerely,

LaNelle C. Durant  
Appellate Defender

LCD/pds

cc: Mary S. Williams, Esquire

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

MAR 19 2012

\_\_\_\_\_  
Appeal From Lee County  
Hon. Howard P. King, Circuit Court Judge

S.C. Supreme Court

The State,

Respondent,

v.

Marcus Evans,

Appellant.

\_\_\_\_\_  
**PROOF OF SERVICE**  
\_\_\_\_\_

I, Lauren Meara, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Lanelle Cantey Durant, Esquire  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 19<sup>th</sup> day of MARCH, 20 12.

Lauren Meara  
Lauren Meara  
Administrative Assistant  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

# The Supreme Court of South Carolina

The State,

Respondent,

v.

Marcus Evans,

Appellant.

The Honorable Howard P. King  
Sumter County  
Trial Court Case No. 2000-GS-31-00010

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## ORDER

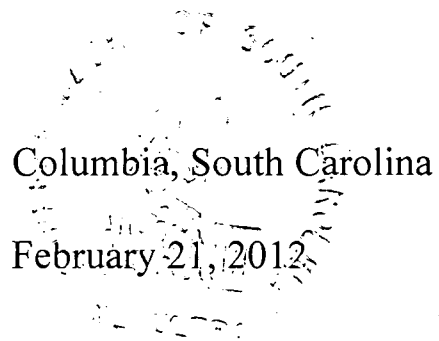
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For good cause shown, the request for an extension to serve and file the Initial Brief of Respondent and Designation of Matter is granted and extended until March 19, 2012. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Brenda J. Shealy  
Chief Deputy CLERK



Columbia, South Carolina

February 21, 2012

cc: Appellate Defender LaNelle C. DuRant  
Assistant Attorney General Mary S. Williams



ALAN WILSON  
ATTORNEY GENERAL

February 17, 2012

RECEIVED

FEB 17 2012

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

S.C. Supreme Court

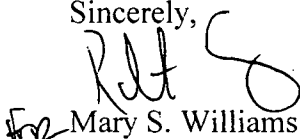
**Re: State of South Carolina v. Marcus Evans**  
**2000-GS-31-0010**

Dear Mr. Shearouse:

The Initial Brief of Respondent and Designation of Matter in the above appeal is due to be served and filed on today's date. However, this is to respectfully request a 30-day extension to serve and file this Initial Brief. By her signature below, LaNelle DuRant, indicates that she consents to this extension.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a workload.

Sincerely,


  
for Mary S. Williams  
Assistant Attorney General

MSW/lm

cc: LaNelle C. DuRant, Esquire

In compliance with:

*In Re: Extensions in Criminal and Post-Conviction Relief Cases*, (S.C. Sup. Ct. order dated March 18, 2009) (Davis Adv. Sh. No. 13 at 1).

  
SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

  
LANELLE C. DURANT  
Appellate Defender

# The Supreme Court of South Carolina

The State,

Respondent,

v.

Marcus Evans,

Appellant.

The Honorable Howard P. King  
Sumter County  
Trial Court Case No. 2000-GS-31-00010

---

## ORDER

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For good cause shown, the request for an extension to serve and file the Initial Brief of Respondent and Designation of Matter is granted and extended until February 17, 2012. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

January 19, 2012

cc: Appellate Defender LaNelle C. DuRant  
Assistant Attorney General Mary S. Williams



ALAN WILSON  
ATTORNEY GENERAL

January 18, 2012

RECEIVED

JAN 18 2012

S.C. Supreme Court

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: State of South Carolina v. Marcus Evans**  
**2000-GS-31-0010**

Dear Mr. Shearouse:

The Initial Brief of Respondent and Designation of Matter in the above appeal is due to be served and filed on today's date. However, this is to respectfully request a 30-day extension to serve and file this Initial Brief.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a workload.

Sincerely,

Mary S. Williams  
Assistant Attorney General

MSW/lm

cc: LaNelle C. DuRant, Esquire

# The Supreme Court of South Carolina

The State,

Respondent,

v.

Marcus Evans,

Appellant.

The Honorable Howard P. King  
Sumter County  
Trial Court Case No. 2000-GS-31-00010

---

## ORDER

---

The request for an extension to serve and file the initial brief of respondent and designation of matter is granted and extended until January 18, 2012. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY

  
CLERK

Columbia, South Carolina

December 20, 2011

cc: Appellate Defender LaNelle C. DuRant  
Assistant Attorney General Mary S. Williams



ALAN WILSON  
ATTORNEY GENERAL

RECEIVED

DEC 19 2011

December 19, 2011

S.C. Supreme Court

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: State of South Carolina v. Marcus Evans**  
**2000-GS-31-0010**

Dear Mr. Shearouse:

The Initial Brief of Respondent and Designation of Matter in the above appeal is due to be served and filed on today's date. However, this is to respectfully request a 30-day extension to serve and file this Initial Brief.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a workload.

Sincerely,

Mary S. Williams  
Assistant Attorney General

MSW/lm

cc: LaNelle C. DuRant, Esquire



ALAN WILSON  
ATTORNEY GENERAL

December 19, 2011

RECEIVED

DEC 19 2011

S.C. Supreme Court

The Honorable Daniel E. Shearouse  
Clerk of the South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: State of South Carolina v. Marcus Evans**  
**2000-GS-31-0010**

Dear Mr. Shearouse:

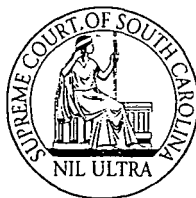
After reviewing the Appellant's Initial Brief and Designation of Matter, I will be representing the State in this appeal. Please note me as counsel of record for the State and forward all future correspondence regarding this case directly to me.

Sincerely,

Mary S. Williams  
Assistant Attorney General

MSW/lm

cc: LaNelle C. DuRant, Esquire  
Trisha Allen, Victim Services



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

October 3, 2011

Appellate Defender LaNelle C. DuRant  
South Carolina Commission on Indigent Defense  
P O Box 11589  
Columbia, SC 29211

Re: The State v. Evans, Marcus

Dear Counsel:

Enclosed is the order issued in the above entitled matter.

Please be advised the Initial Brief of Appellant and Designation of Matter should be served and filed within thirty (30) days of the date of this letter.

Very truly yours,

CLERK

DES/dmh

Enclosure

cc: Assistant Deputy Attorney General Salley W. Elliott

# The Supreme Court of South Carolina

The State, Respondent,

v.

Marcus Evans, Appellant.

Marcus Evans, Petitioner,

v.

State of South Carolina, Respondent.

---

## ORDER

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Marcus Evans moves to consolidate the above-captioned matters now pending before this Court. One is an appeal from an order of the court of general sessions denying Mr. Evans' motion for a new trial based on after-discovered evidence, while the other is an appeal from an order of the court of common pleas denying Mr. Evans' application for post-conviction relief. The State opposes the motion to consolidate the two appeals. The motion to consolidate is denied; however, the two matters shall be monitored by this Court as related matters.

IT IS SO ORDERED.

  
C. J.  
FOR THE COURT

Columbia, South Carolina

October 3, 2011

cc: Chief Appellate Defender Robert M. Dudek  
Assistant Attorney General Mary S. Williams  
Appellate Defender LaNelle C. DuRant  
Assistant Deputy Attorney General Salley W. Elliott

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Sumter County  
Howard P. King, Circuit Court Judge

---

ORIGINAL  
RECEIVED

SEP - 6 2011

THE STATE,

S.C. Supreme Court  
RESPONDENT,

V.

MARCUS EVANS,

APPELLANT

---

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Lee County  
William Jeffrey Young, Circuit Court Judge

---

MARCUS EVANS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

MOTION TO CONSOLIDATE DIRECT APPEAL FROM A MOTION FOR NEW  
TRIAL BASED ON AFTER DISCOVERED EVIDENCE AND APPEAL  
OF DENIAL OF POST-CONVICTION RELIEF

---

The Office of Appellate Defense currently has two appeals pending for the same person, Marcus Evans. One appeal is from a motion for a new trial (2000-GS-31-10) and the other is an appeal from the denial of post-conviction relief (2007-CP-31-0075).

The Appellate Attorneys for Marcus Evans, LaNelle C. Durant for the direct appeal of the denial of the motion for new trial based on after discovered evidence, and Robert M. Dudek for the appeal from the denial of post-conviction relief, move to consolidate the direct appeal from the denial of the motion for a new trial based on after discovered evidence and the appeal of the denial of post-conviction relief. In support of this motion, counsels show:

1. After initial review of the files, both attorneys for Mr. Evans learned that the appeals concern the same issue of newly discovered evidence that the co-defendant, Ron Taylor, admitted at his guilty plea (following the grant of his PCR application) that he was the shooter and owned a .380 pistol that matched bullets from the victim.

2. The initial brief of appellant and designation of matter in the direct appeal of the denial of the motion for new trial based on after discovered evidence are due to be filed and served with the Court on September 16, 2011. The petition for writ of certiorari and appendix in the appeal of the denial of post-conviction relief are due to be served and filed on October 3, 2011.

3. All documents from both cases will be consolidated into one appendix and a supplemental appendix for the new trial motion.

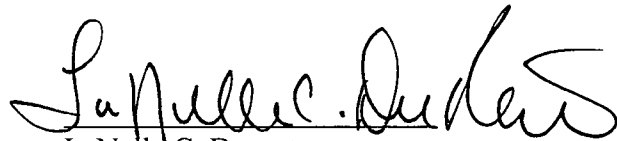
4. Counsels make this request in good faith and in the interest of judicial economy.

5. By copy of this motion, opposing counsels for the Attorney General's office have been informed of this request.

WHEREFORE, the undersigned attorneys would respectfully request permission to consolidate the direct appeal the denial of the motion for a new trial based on after discovered

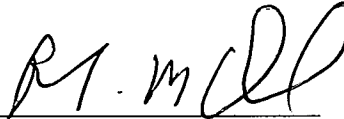
evidence and the appeal of the denial of post-conviction relief in this case. Further, the attorneys for Mr. Evans request that the time limits for filing in this case be held in abeyance and be set for thirty (30) days after the date of the resolution of this motion.

Respectfully submitted,



LaNelle C. Durant  
Appellate Defender

ATTORNEY FOR APPELLANT



Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of September, 2011.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Sumter County  
Howard P. King, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

MARCUS EVANS,

APPELLANT

---

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Lee County  
William Jeffrey Young, Circuit Court Judge

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MARCUS EVANS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

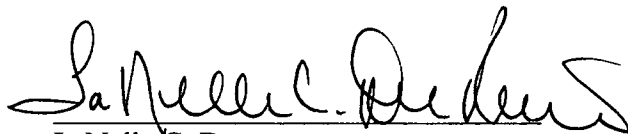
RESPONDENT

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CERTIFICATE OF SERVICE

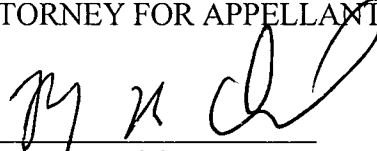
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I certify that a true copy of the motion consolidate the direct appeal from a motion for a new trial based on after discovered evidence and the appeal of the denial of post-conviction relief, in this case has been served on Mary S. Williams, Esquire, and Salley W. Elliott, Esquire, this 6th day of September, 2011.



LaNelle C. Durant  
Appellate Defender

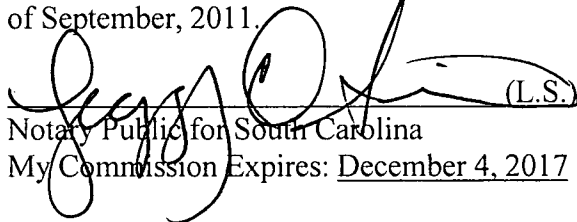
ATTORNEY FOR APPELLANT



Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 6th day  
of September, 2011.



(L.S.)  
Notary Public for South Carolina  
My Commission Expires: December 4, 2017

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Lee County  
The Honorable Howard P. King, Circuit Court Judge

---

**RECEIVED**

SEP 26 2011

**S.C. Supreme Court**

THE STATE,

Respondent,

vs,

MARCUS EVANS,

Appellant.

---

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Lee County  
The Honorable William J. Young, Circuit Court Judge

---

MARCUS EVANS,

Petitioner,

vs,

STATE OF SOUTH CAROLINA,

Respondent.

---

**RETURN TO MOTION TO CONSOLIDATE DIRECT APPEAL FROM A  
MOTION FOR NEW TRIAL BASED ON AFTER DISCOVERED EVIDENCE  
AND APPEAL OF DENIAL OF POST-CONVICTION RELIEF**

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Respondent, by and through undersigned counsel, would respectfully show to this Court:

1. The appeal of Marcus Evans v. State of South Carolina arises from an Order denying a newly-discovered evidence claim in a Post-Conviction Relief action. The Order was issued in the Court of Common Pleas for Lee County after a full evidentiary hearing was held. The Court of Common Pleas concluded that Petitioner failed to meet his burden of proof with regard to the newly discovered claim. Petitioner filed and served Notice of Appeal from the Order denying Post-Conviction Relief on October 21, 2010. The appeal is currently pending before this Court for discretionary review pursuant to Rule 243, SCACR. Rule 243, SCACR permits the Petitioner to file a Petition for Writ of Certiorari requesting this Court to exercise its discretion and permit appellate court review. The time limitations for a notice of appeal from a civil action governs the appeal and transcript request. The Rule 243, SCACR requires the Petitioner to file and serve a copy of the Appendix containing the entire record presented to the Court of Common Pleas. The concurrence of two Justices is required for a grant of the petition on any question presented. Only if the petition is granted shall the parties present briefs. See Rule 243(j), SCACR.

2. The matter of State v. Marcus Evans is before this Court as a direct appeal from the Court of General Sessions pertaining to the denial of a Rule 29(b), SCRCrimP motion for a new trial based upon after discovered evidence. A hearing respecting the Rule 29(b) motion was held on October 8, 2010 in the Lee County Court of General Sessions. At that hearing, a number of exhibits were introduced as evidence and the Court heard argument from counsel. Neither party presented testimony of witnesses. Among

the exhibits introduced were the transcript of the co-defendant's guilty plea, a SLED report, the chain of custody form, an invoice, and the Post-Conviction Relief Order denying Petitioner's request for a new trial based on newly discovered evidence as well as a memorandum, motion to compel ruling and Rule 59(e) motion respecting the Post-Conviction Relief Order. An Order was issued on November 15, 2010 by the Honorable Howard P. King denying Petitioner's Rule 29(b) motion for new trial based on newly discovered evidence. Petitioner filed and served a Notice of Appeal from that Order. The time limitations for serving notice of appeal and ordering the transcript for criminal appeal apply.

3. The attorneys for Marcus Evans for the direct appeal and the appeal from the denial of Post-Conviction Relief move to consolidate the direct appeal and the Post-Conviction Relief appeal arguing the appeals concern the same issue of newly discovered evidence. Counsel for Evans suggest that both cases can be consolidated into one appendix and a supplemental appendix for the appeals.

4. Respondent opposes the motion to consolidate the appeals on the ground that one appeal arises from the Court of General Sessions and the other from the Court of Common Pleas. The matters were heard by two separate judges and record and evidence before the circuit courts were not the same. The appeals will have separate transcripts and it does not appear the transcripts of the separate proceedings were made part of each record below. In addition to the different and separate records for each appeal, an appeal from a civil Post-Conviction Relief action involves a different appellate standard of review from an appeal arising from the Court of General Sessions. Compare State v. Mercer, 381 SC 149, 672 S.E. 2d 556 (2008) (decisions whether to grant a new trial will

not be disturbed on appeal absent an abuse of trial court discretion, and Chalk v. State, 313 SC 25, 437 S.E. 2<sup>d</sup> 1 (1993) (Post-Conviction Relief finding will be upheld on appeal if supported by any competent evidence.

5. Respondent additionally objects to consolidation of the appeals because the appellate process will become cumbersome and confusing. An appeal from the denial of Post-Conviction Relief involves a discretionary appeal process which requires the Petitioner to file a Petition for Writ of Certiorari and the Respondent to file a Return. Only upon the concurrence of two Justices is the petition to be granted and formal briefing allowed. Conversely, the appeal from Court of General Sessions is governed by Rules 203; 207; 208-211, SCACR. A direct appeal requires submission of initial briefs from both parties, designations of matter followed by final briefs and a record on appeal that contains only matters pertinent to the issues and that were presented to the lower Court rather than the record of the entire proceedings below.

6. While Respondent has no objection to the cases be considered during the same term of court, consolidation of these appeals will be unworkable and inappropriate.

WHEREFORE, for the reasons stated above, Respondent opposes the motion to consolidate and asks this Court to deny the request.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

DANIEL E. JOHNSON  
Solicitor, 3<sup>rd</sup> Judicial Circuit

BY:



Salley W. Elliott  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 26, 2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Lee County  
The Honorable Howard P. King, Circuit Court Judge

---

THE STATE,

Respondent,

vs,

MARCUS EVANS,

Appellant.

---

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Lee County  
The Honorable William J. Young, Circuit Court Judge

---

MARCUS EVANS,

Petitioner,

vs,

STATE OF SOUTH CAROLINA,

Respondent.

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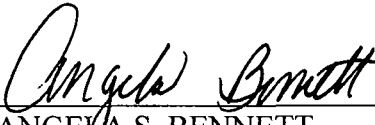
**PROOF OF SERVICE**

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I, Angela Benentt, certify that I have served the Return to Motion to Consolidate Direct Appeal from a Motion for New Trial Based on After Discovered Evidence and Appeal of Denial of Post-Conviction Relief on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorneys LaNelle C. Durant, Esquire and Robert M. Dudek, Esquire S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589.

I further certify that all parties required by Rule to be served have been served.

This 26<sup>th</sup> day of September, 2011.



ANGELA S. BENNETT  
Administrative Assistant  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

# The Supreme Court of South Carolina

The State,

Respondent,

v.

Marcus Evans,

Appellant.

The Honorable Howard P. King  
Sumter County  
Trial Court Case No. 2000-GS-31-00010

---

## ORDER

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The request for an extension to serve and file the Return to Motion to Consolidate Direct Appeal from a Motion for New Trial Based on After Discovered Evidence and Appeal of Denial of Post-Conviction Relief is granted and extended until September 26, 2011.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

September 19, 2011

cc: Appellate Defender LaNelle C. DuRant  
Assistant Deputy Attorney General Salley W. Elliott



ALAN WILSON  
ATTORNEY GENERAL

September 16, 2011

**VIA HAND-DELIVERY**

The Honorable Daniel E. Shearouse  
Clerk, SC Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**RECEIVED**

SEP 16 2011

**S.C. Supreme Court**

Re: The State v. Marcus Evans (2000-GS-31-00010)  
Marcus Evans v. The State (2007-CP-31-00075)

Dear Mr. Shearouse:

The Return to the Motion to Consolidate Direct Appeal From a Motion for New Trial Based on After Discovered Evidence and Appeal of Denial of Post-Conviction Relief is due to be served and filed September 16, 2011. However, due to review of these matters and a heavy workload, I am requesting a 10-day extension to file the aforementioned document. This is the first extension request in this case, and it is not intended for the purpose of delay.

I appreciate your consideration of this request and ask that you hold the filing time in abeyance during the time in which this request is pending.

By copy of this letter, I am informing counsel of this extension request.

Sincerely,

Salley W. Elliott  
Assistant Deputy Attorney General

SWE/erd

cc: LaNelle C. DuRant, Esquire  
Robert M. Dudek, Esquire

# The Supreme Court of South Carolina

The State,

Respondent,

v.

Marcus Evans,

Appellant.

The Honorable Howard P. King  
Sumter County  
Trial Court Case No. 2000-GS-31-00010

---

## ORDER

---

For good cause shown, the request for an extension to serve and file the Initial Brief of Appellant and Designation of Matter is granted and extended until September 16, 2011 . Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK



Columbia, South Carolina

August 18, 2011

cc: Appellate Defender LaNelle C. DuRant  
Assistant Deputy Attorney General Salley W. Elliott

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Sumter County

Howard P. King, Circuit Court Judge

---

RECEIVED

AUG 17 2011

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

MARCUS EVANS,

APPELLANT

---

MOTION FOR AN EXTENSION OF TIME  
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT  
AND DESIGNATION OF MATTER

---

Counsel for Marcus Evans respectfully requests an additional extension of thirty days, in which to file the Initial Brief of Appellant and Designation of Matter in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a third request for an extension of time in this case. In support of this request, counsel shows:

In support of this request, counsel shows:

(1) The initial brief of appellant and designation of matter are due to be served and filed, today. This Court has granted two previous extensions in this case.

(2) Counsel for Mr. Evans respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions

previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.

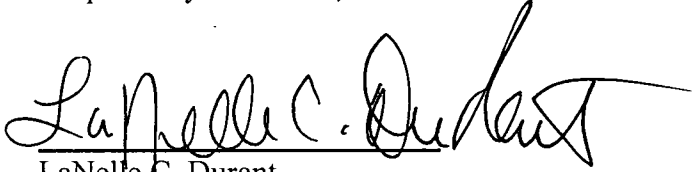
3. Counsel filed the initial brief of appellant and designation of matter in State v. Charles Bagley on August 15, 2011. On July 26, 2011, counsel filed the return to petition for rehearing in the case of State v. Phillip Sawyer. On July 14, 2011, counsel filed the petition for writ of certiorari and appendix in the cases of Eddie Harvey v. State and Arthur Young v. State; and filed the petition for rehearing in the case of State v. Lloyd Wright. On July 13, 2011, counsel filed the initial brief of appellant and designation of matter in the cases of State v. Bryan Phillips and In the Interest of: Joseph C., a Minor under the Age of Seventeen. On July 5, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Ernest Evans. On June 30, 2011, counsel filed the petition for writ of certiorari to the Court of Appeals in the cases of In the Matter of Thomas Simmons and State v. Barry Evans. On June 27, 2011, counsel filed the petition for writ of certiorari and appendix in the case of John Chancy v. State. On June 23, 2011, counsel filed the petition for rehearing in the case of In the Matter of Vince Neal Way. On June 21, 2011 counsel had an oral argument in the case of State v. Christopher Commander in the Supreme Court. On June 13, 2011, counsel filed the initial brief of appellant and designation of matter in the cases of State v. Craig Rolen and State v. David Sheriff in this Court. On June 6, 2011, counsel filed the brief of petitioner in the case of State v. Reginald Latimore in the Supreme Court.


(4) Counsel respectfully asks this Court for an additional 30 day extension of time to file the initial brief of appellant and designation of matter. Counsel understands that the Court has granted two previous extensions in this case, and is striving to limit the number of extensions requested.

(6) Counsel for the Attorney General's office consents to this request as shown by signature.

WHEREFORE, the undersigned counsel would respectfully request an extension of thirty days in which to file the initial brief of appellant and designation of matter in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the brief be held in abeyance pending a ruling on this motion.

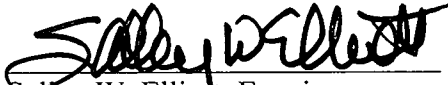
Respectfully submitted,

  
\_\_\_\_\_  
LaNelle C. Durant  
Appellate Defender

  
\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender

August 17, 2011

I consent:

  
\_\_\_\_\_  
Salley W. Elliott, Esquire

# The Supreme Court of South Carolina

The State,

Respondent,

v.

Marcus Evans,

Appellant.

The Honorable Howard P. King  
Sumter County  
Trial Court Case No. 2000-GS-31-00010

---

## ORDER

---

For good cause shown, the request for an extension to serve and file the Initial Brief of Appellant and Designation of Matter is granted and extended until August 17, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Drenda F. Shealy*  
*Chief Deputy* CLERK

Columbia, South Carolina

July 21, 2011

cc: Appellate Defender LaNelle C. DuRant  
Assistant Deputy Attorney General Salley W. Elliott

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPRME COURT

\_\_\_\_\_  
Appeal from Sumter County  
Howard P. King, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

JUL 20 2011

S.C. Supreme Court

STATE OF SOUTH CAROLINA,

RESPONDENT

V.

MARCUS EVANS,

APPELLANT

\_\_\_\_\_  
MOTION FOR AN EXTENSION OF TIME  
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT  
AND DESIGNATION OF MATTER  
\_\_\_\_\_

Counsel for Marcus Evans respectfully requests an additional extension of thirty days, in which to file the Initial Brief of Appellant and Designation of Matter in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a second request for an extension of time in this case. In support of this request, counsel shows:

In support of this request, counsel shows:

(1) The initial brief of appellant and designation of matter are due to be served and filed, June 18, 2011. This Court has granted one previous extensions in this case.

(2) Counsel for Mr. Evans respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions

previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.

(3) On July 14, 2011, counsel filed the petition for writ of certiorari and appendix in the cases of Eddie Harvey v. State and Arthur Young v. State; and filed the petition for rehearing in the case of State v. Lloyd Wright. On July 13, 2011, counsel filed the initial brief of appellant and designation of matter in the cases of State v. Bryan Phillips and In the Interest of: Joseph C., a Minor under the Age of Seventeen. On July 5, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Ernest Evans. On June 30, 2011, counsel filed the petition for writ of certiorari to the Court of Appeals in the cases of In the Matter of Thomas Simmons and State v. Barry Evans. On June 27, 2011, counsel filed the petition for writ of certiorari and appendix in the case of John Chancy v. State. On June 23, 2011, counsel filed the petition for rehearing in the case of In the Matter of Vince Neal Way. On June 21, 2011 counsel had an oral argument in the case of State v. Christopher Commander in the Supreme Court. On June 13, 2011, counsel filed the initial brief of appellant and designation of matter in the cases of State v. Craig Rolen and State v. David Sheriff in this Court. On June 6, 2011, counsel filed the brief of petitioner in the case of State v. Reginald Latimore in the Supreme Court.

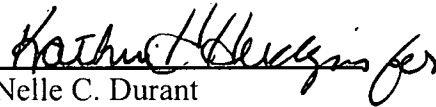
(4) Counsel respectfully asks this Court for an additional 30 day extension of time to file the initial brief of appellant and designation of matter. Counsel understands that the Court has granted three previous extensions in this case, and is striving to limit the number of extensions requested.

(5) Counsel makes this request in good faith and not for purpose of delay.

(6) Counsel for the Attorney General's office consents to this request as shown by signature.

WHEREFORE, the undersigned counsel would respectfully request an extension of thirty days in which to file the initial brief of appellant and designation of matter in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the brief be held in abeyance pending a ruling on this motion.

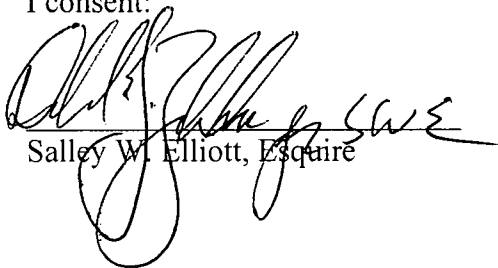
Respectfully submitted,

  
LaNelle C. Durant  
Appellate Defender

Attorney for Petitioner

July 20, 2011

I consent:

  
Salley W. Elliott, Esquire

# The Supreme Court of South Carolina

The State,

Respondent,

v.

Marcus Evans,

Appellant.

The Honorable Howard P. King  
Sumter County  
Trial Court Case No. 2000-GS-31-00010

---

## ORDER

---

The request for an extension to serve and file the Initial Brief of Appellant and Designation of Matter is granted and extended until July 18, 2011.

Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Deirda J. Shealy*  
CLERK

*Chief Deputy*

Columbia, South Carolina

June 21, 2011

cc: Appellate Defender LaNelle C. DuRant  
Assistant Deputy Attorney General Salley W. Elliott



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

June 17, 2011

RECEIVED

JUN 20 2011

The Honorable Daniel E. Shearouse  
Clerk of Court, S.C. Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

S.C. Supreme Court

Re: The State v. Marcus Evans

Dear Mr. Shearouse:

The initial brief of appellant and designation of matter in this case are due to be served and filed with the Court June 17, 2011. However, because of my heavy workload at this time, I am requesting an extension for 30 days, in which to serve and file the brief.

By copy of this letter, I am informing Salley Elliott, of the Attorney General's Office, of my request.

Sincerely,

LaNelle C. Durant  
Appellate Defender

LCD/pds

cc: Salley Elliott, Esquire



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332

Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1343  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

April 18, 2011

The Honorable Daniel E. Shearouse  
Clerk, S.C. Supreme Court  
Post Office Box 11330  
Columbia, SC 29211

RECEIVED  
APR 18 2011  
SC Court of Appeals

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

The State v. Marcus Evans

4/18/2011

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

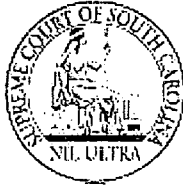
Sincerely,

Loriene French  
Legal Services Coordinator

RECEIVED

APR 26 2011

S.C. Supreme Court



The Supreme Court of South Carolina

RECEIVED

APR 14 2011

S.C. Supreme Court

( State  
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 TITLE OF ( V. 00-GS-31-0010  
 CASE (  
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 ( Marcus Evans  
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Notice

Upon request and for good cause shown, Margaret Sullivan, Court Reporter, is hereby granted an extension up to and including May 09, 2011 to prepare and deliver the Transcript of Record in the above case.

*Desiree Allen*  
Court Services Manager  
South Carolina Court Administration

Columbia, South Carolina  
04/11/2011

cc: Division of Appellate Defense  
Margaret Sullivan



## Hopkins, Debbie

---

**From:** Allen, Desiree  
**Sent:** Monday, April 04, 2011 3:16 PM  
**To:** Loriene P. French; Hopkins, Debbie  
**Subject:** RE:

The last extension expired on March 23, 2011. A copy would have been sent to both your offices. I have made an inquiry of CR, Margaret Sullivan. I will let you know what she says about the status.

---

**From:** Loriene P. French [mailto:LFrench@sccid.sc.gov]  
**Sent:** Monday, April 04, 2011 3:11 PM  
**To:** Hopkins, Debbie  
**Cc:** Allen, Desiree  
**Subject:** RE:

Since my late letter dated March 22, 2011, I have not received the transcript nor an extension from Court Administration.

Loriene French  
Division of Appellate Defense  
P O Box 11589  
Columbia, SC 29211-1589  
(803)734-1330  
Fax: (803)734-1397

---

**From:** Hopkins, Debbie [mailto:DHopkins@sccourts.org]  
**Sent:** Monday, April 04, 2011 2:40 PM  
**To:** Loriene P. French  
**Subject:**

Loriene,

Do you have the transcript on the State v. Marcus Evans?

*Debbie M. Hopkins*  
*South Carolina Supreme Court*  
*P. O. Box 11330*  
*Columbia, South Carolina 29211*  
*(803) 734-1080*



Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332

Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1343  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

March 22, 2011

Ms. Desiree Allen  
S.C. Court Administration  
1015 Sumter Street, 2nd Floor  
Columbia, South Carolina 29201-3739

**RECEIVED**  
MAR 22 2011  
S.C. Supreme Court

Dear Ms. Allen:

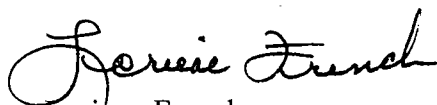
The transcript listed below was requested by this office. Pursuant to Rule 207(a)(2), SCACR, the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same.

<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Margaret T. Sullivan	3/9/11	Marcus Evans

Trial Date: October 8, 2010

I would appreciate your confirming in writing as to the status of the above-referenced transcript. If you should have any questions, please do not hesitate to contact me.

Sincerely,

  
Lorie French  
Legal Services Coordinator

cc: S.C. Supreme Court  
Attorney General's Office

**Hopkins, Debbie**

---

**From:** Allen, Desiree  
**Sent:** Wednesday, March 09, 2011 11:19 AM  
**To:** Hopkins, Debbie  
**Subject:** RE:

There are two "Marcus Evans" cases on Margaret's report. One (State v. Evans) has an extension through March 9, and one (Evans v. State) has an extension through March 23. Copies of extensions are sent to Appellate Defense as they are granted.

I will contact Henry Young about the Harrison case. It looks like it was due on February 14. I don't have any record of him requesting an extension.

---

**From:** Hopkins, Debbie  
**Sent:** Tuesday, March 08, 2011 10:40 AM  
**To:** Allen, Desiree  
**Subject:**

**Good morning Desiree,**

**Appellate Defense sent you late letters on these 2 cases and I have not received an update from your office or Appellate Defense. Please check on delivery of these transcripts and notify me of the status as soon as possible.**

**Marcus Evans ( CR Margaret Sullivan)**

**Andrew Harrison ( CR Henry Young)**

**Thank you.**

*Debbie M. Hopkins  
South Carolina Supreme Court  
P. O. Box 11330  
Columbia, South Carolina 29211  
(803) 734-1080*



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332

Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1343  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

February 17, 2011

Ms. Desiree Allen  
S.C. Court Administration  
1015 Sumter Street, 2nd Floor  
Columbia, South Carolina 29201-3739

Dear Ms. Allen:

The transcript listed below was requested by this office. Pursuant to Rule 207(a)(2), SCACR, the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same.

<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Margaret T. Sullivan	2/7/11	Marcus Evans

Trial Date: October 8, 2010

I would appreciate your confirming in writing as to the status of the above-referenced transcript. If you should have any questions, please do not hesitate to contact me.

Sincerely,

Loriene French  
Legal Services Coordinator

cc: S.C. Supreme Court  
Attorney General's Office

RECEIVED

FEB 17 2011

S.C. Supreme Court



HENRY McMASTER  
ATTORNEY GENERAL

January 6, 2011

**RECEIVED**

JAN 06 2011

**S.C. Supreme Court**

The Honorable Daniel E. Shearouse  
Clerk of the South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**RE: State of South Carolina v. Marcus Evans**  
**2000-GS-31-0010**

Dear Mr. Shearouse:

I received the Supreme Court's December 17, 2010 Order in the above case. I will be representing the State regarding this appeal. Please note me as counsel of record for the State and forward all future correspondence regarding this case directly to me.

Sincerely,

Mary S. Williams  
Assistant Attorney General

MSW/lm

cc: Robert M. Dudek, Esquire  
Trisha Allen, Victim Services

# The Supreme Court of South Carolina

The State,

Respondent,

v.

Marcus Evans,

Appellant.

The Honorable Howard P. King  
Sumter County  
Trial Court Case No. 2000-GS-31-00010

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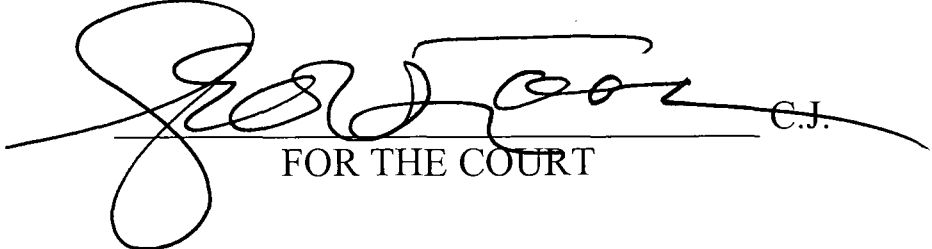
## ORDER

---

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court.

Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.

  
C.J.  
FOR THE COURT

Columbia, South Carolina

December 17, 2010

cc: Chief Appellate Defender Robert M. Dudek  
Assistant Deputy Attorney General Donald J. Zelenka  
The Honorable Tanya Gee



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Defender  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender  
Joseph L. Savitz, III, Senior Appellate

December 8, 2010

RECEIVED  
DEC 08 2010  
SC Court of Appeals

Tricia A. Blanchette; Esquire  
P O Box 12725  
Columbia, SC 29211

Re: The State v. Marcus Evans

Dear Ms. Blanchette:

The Chief Appellate Defender has reviewed the Affidavit of Indigency for the above case and has approved for this Office to perfect the appeal for Mr. Evans.

Please contact me if you should have any questions concerning this matter.

Sincerely,

Lorie French  
Legal Services Coordinator

cc: S.C. Court of Appeals

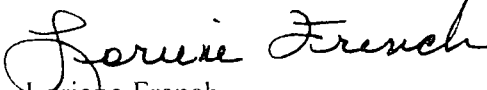


Ms. Margaret T. Sullivan  
December 8, 2010  
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

  
Lorie French  
Legal Services Coordinator

cc: S.C.Court of Appeals  
Attorney General's Office



## LAW OFFICE OF TRICIA A. BLANCHETTE

November 30, 2010

The Honorable Tanya A. Gee  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

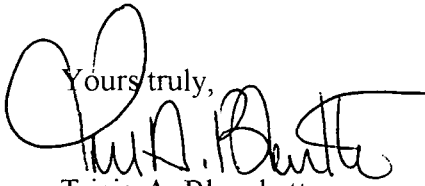
RE: State v. Marcus Evans; Docket No.: 2000-GS-31-0010

Dear Ms. Gee:

On November 29, 2010, I filed a Notice of Appeal in the above referenced case. Today, I met with Marcus Evans, Appellant, and he completed an Affidavit of Indigency. By copy of this letter, I am sending the completed Affidavit of Indigency to the Office of Appellate Defense, along with a copy of the Notice of Appeal and Order.

It is my understanding that this Affidavit will be processed by the Office of Appellate Defense, and if accepted, my representation will cease. For that reason, I have not ordered the transcript from the hearing held in front of the Honorable Howard P. King on October 8, 2010.

Thank you for your consideration in this matter. Please contact me if any additional information is needed.

Yours truly,  
  
Tricia A. Blanchette  
Attorney at Law

cc: Office of Appellate Defense  
Marcus Evans

**RECEIVED**

DEC 02 2010

**SC Court of Appeals**

Post Office Box 12725 Columbia, South Carolina 29211

Phone: 803-988-0008 Facsimile 803-988-8070

Email: [BlanchetteLaw@Gmail.com](mailto:BlanchetteLaw@Gmail.com)



# The South Carolina Court of Appeals

TANYA A. GEE  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

December 1, 2010

Tricia A. Blanchette, Esquire  
Law Office of Tricia A. Blanchette, LLC  
P.O. Box 12725  
Columbia, SC 29211

Re: The State v. Evans, Marcus  
2010178426

Dear Ms. Blanchette:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

Please be advised that pursuant to Rule 602, SCACR and the order of the Chief Justice dated December 12, 1997, if you expect the Office of Indigent Defense to pursue this appeal, you must provide that office with all information required to proceed with this appeal, failing which, this office will consider you counsel of record.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within thirty (30) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the

notification requirements c ule 207(a)(5), SCACR. also, please ac the Court in writing  
upon receipt of the transcript.

**NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately.** The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

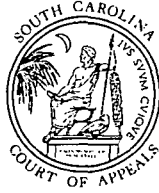
Very truly yours,

*V. Claire Allen, Deputy*

Tanya A. Gee  
CLERK

TAG/dw

cc: Chief Appellate Defender Robert M. Dudek  
Assistant Deputy Attorney General Don Zelenka  
John R. Gentry, Esquire



# The South Carolina Court of Appeals

TANYA A. GEE  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
WWW.SCCOURTS.ORG

December 1, 2010

Tricia A. Blanchette, Esquire  
Law Office of Tricia A. Blanchette, LLC  
P.O. Box 12725  
Columbia, SC 29211

Re: The State v. Evans, Marcus  
2010178426

Dear Ms. Blanchette:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

TAG/dw

cc: Chief Appellate Defender Robert M. Dudek  
Assistant Deputy Attorney General Don Zelenka  
John R. Gentry, Esquire

2010178426

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Pos 11-29-10  
pm 11-29-10

APPEAL FROM SUMTER COUNTY  
Court of General Sessions

Howard P. King, Circuit Court Judge

Case No. 2000-GS-31-0010

The State,

Respondent,

v.

**RECEIVED**

Marcus Evans, 237444,

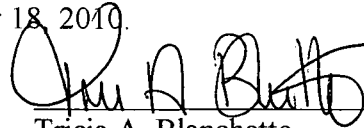
Appellant.

NOV 29 2010

**SC Court of Appeals**

NOTICE OF APPEAL

Marcus Evans appeals the Order Denying Motion For A New Trial Based On After-Discovered Evidence, Pursuant to Rule 29(b), SCRCrimP. Appellant received written notice of entry of this order, through counsel, on November 18, 2010.



Tricia A. Blanchette  
Post Office Box 12725  
Columbia, South Carolina 29211  
(803) 988-0008  
Attorney for Appellant

Other Counsel of Record:  
John R. Gentry  
Assistant Solicitor  
Post Office Box 361  
Columbia, South Carolina 29010  
(803) 484-5341  
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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of General Sessions

Howard P. King, Circuit Court Judge

Case No. 2000-GS-31-0010

The State,

Respondent,

v.

Marcus Evans, 237444,

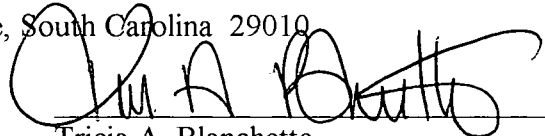
Appellant.

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SC Court of Appeals

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for the Appellant, hereby certify that I placed in the United States Mail on this 29<sup>th</sup> day of November 2010, a copy of a Notice of Appeal and copy of Order Denying Motion For A New Trial Based On After-Discovered Evidence Pursuant to Rule 29(b), SCRCrimP, with postage prepaid and the return address clearly shown on said envelope to John R. Gentry with the Solicitor's Office for the Third Judicial Circuit at:

John R. Gentry  
Assistant Solicitor  
Post Office Box 361  
Bishopville, South Carolina 29010



Tricia A. Blanchette  
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Columbia, South Carolina 29211  
(803) 988-0008  
Attorney for Appellant

November 29, 2010

STATE OF SOUTH CAROLINA NOV 16 2010

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEE

JAMES I. DAVIS  
FILED  
LEE COUNTY, S.C.  
C.C.P. & G.S.

DOCKET NO.: 2000-GS-31-10

ORDER DENYING MOTION FOR A NEW TRIAL

STATE OF SOUTH CAROLINA, )

BASED ON AFTER-DISCOVERED EVIDENCE,

V. )

PURSUANT TO RULE 29(b), SCRCrimP

MARCUS EVANS, 237444, )

Defendant, )

This matter is before the Court on a motion for a new trial based upon after-discovered evidence pursuant to Rule 29(b), SCRCrimP. The Defendant contends that the admissions made by Ron Taylor at his plea hearing on October 5, 2009 amounts to after-discovered evidence under Rule 29(b), SCRCrimP, and State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999). This Court disagrees.

PROCEDURAL HISTORY

The Defendant ("Evans") is presently confined to the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lee County. Evans was indicted at the February 2000 term for Murder and on December 11-15, 2000, Evans and Co-Defendant Ron Taylor ("Taylor") proceeded to a jury trial. Both were found guilty of voluntary manslaughter. Evans was sentenced to confinement for eighteen (18) years. A timely Notice of Appeal was filed and the South Carolina Court of Appeals affirmed. State v. Evans Op. No 2002-UP-674.

Evans filed an Application for Post-Conviction Relief (PCR) on March 31, 2003 (Docket No. 2003-CP-31-0065). An evidentiary hearing was held and the Court denied and dismissed the application by written order dated June 3, 2005, and filed June 8, 2005. A Johnson Petition for Writ of Certiorari was submitted to the South Carolina Supreme Court. The Court transferred the Petition to the South Carolina Court of Appeals and the Court of Appeals denied the petition.

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Certified as a True Copy  
*James I. Davis*  
Clerk, Court of Common Pleas  
and General Sessions, Lee  
County, South Carolina

Evans then filed a Petition under 28 U.S.C. §2254 for Writ of Habeas Corpus by a Person in State Custody in the United States District Court. The Respondent's motion for summary judgment was granted and the petition was dismissed.

On April 4, 2007, Evans filed a subsequent Application for Post-Conviction Relief. After several procedural rulings the Court issued a Final Order. On August 12, 2008, Evans submitted a response. Thereafter, a motion hearing was conducted and the Court issued an Order Denying Motion to Dismiss and Granting Continuation for Evidentiary Hearing which was conducted on April 26, 2010. At this hearing, Evans, Ron Taylor, and Bryan Doby (Evan's trial counsel) testified.

On July 31, 2010, the Court issued an Order of Dismissal, which was filed on August 9, 2010. This order is currently on appeal.

On the matter *sub judice*, the Defendant is alleging after-discovered evidence that warrants a new trial and/or resentencing. To prevail on this claim the Defendant "must show that the after-discovered evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence been discovered prior to trial; (4) is material; and (5) is not merely cumulative or impeaching". *State v. Spann*, 334 S. C. 618, 619, 513 S.E. 2d 98, 99 (1999).

#### SUMMARY OF FACTS

The Defendant was tried jointly for murder with Ron Taylor ("Taylor") on December 11-15, 2000. Taylor filed a Post-Conviction Relief Application, and an evidentiary hearing was held. The Court granted the PCR and the State appealed. The South Carolina Supreme Court denied the State's Petition for Writ of Certiorari. *Taylor v. State*, Op. No. 2009-MO-021.

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Subsequently Taylor pled guilty to voluntary manslaughter and during the plea hearing Taylor admitted his guilt and explained where he was located when he shot the victim. The Court accepted the plea and negotiated sentence of time served.

On April 26, 2010, an evidentiary hearing was conducted on Evans' PCR Application (Docket No.: 2007-CP-31-75). Evans testified and acknowledged that he was tried jointly with Taylor, but that they were represented by separate attorneys who developed the case separately.

Evans identified and counsel admitted the SLED Forensic Services Laboratory Report that was introduced at trial. This report, the trial testimony of Agent Ira Parnell, and the Court decision provided the following facts regarding the ballistics evidence: (1) fifteen spent shell casings were recovered at the scene, (2) ten were from a .380 caliber and five from a .45 caliber; (3) all five of the .45 caliber casings were from the same weapon, (4) six of the .380 caliber casings were from one weapon, three of the .380 caliber casings were from a second weapon, and one of the .380 caliber casings was from a third weapon, (5) four weapons were used and none were recovered, (6) two .380 caliber bullets were found in the victim's body, (7) the two bullets found in the victim's body were from the same HI Point semi-automatic pistol.

Evans testified that no weapons were turned over to SLED, but it came out during trial that the victim's father had turned in a weapon (Testimony of Officer J.D. Dellinger, Trial Transcript, p 611 and counsel's admission in his memorandum in support of this motion). An Evidence Receipt for the .45 caliber pistol was introduced at this hearing and Evans testified that this document was part of the record from Taylor's PCR Action, and he had received it from his present PCR counsel. He further testified that he had never seen or received it prior to his current PCR Action.

Taylor testified and confirmed the joint trial but independent case preparation. Taylor identified and counsel introduced a receipt in his name for a HI Point .380 caliber handgun, which was dated

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February 25, 1999. He testified that he purchased this handgun prior to the shooting at issue and he did not provide this information or receipt to Evans prior to trial, nor did he admit to Evans prior to trial that he shot the victim.

Taylor testified that he entered a guilty plea on October 5, 2009 and acknowledged that he admitted that he was guilty of shooting and killing the victim. Taylor explained that he entered a negotiated plea and received a sentence of time served.

Bryan Doby, Esquire also testified at the evidentiary hearing. Doby agreed that the Defendant's case was prepared independently of Taylor's case. Doby further testified that he did not know about Taylor's weapon purchase prior to his testimony at this hearing. Doby felt that Taylor's testimony was material and opined that would have likely changed the outcome.

#### ANALYSIS

Evans is alleging after-discovered evidence due to the "confession" of Taylor at his guilty plea hearing that he shot and killed the victim. He contends that this admission is buttressed by proof of Taylor's purchase, prior to the shooting, of the caliber and type of weapon linked to the bullets found in the victim's body.

Specifically Evans contends that the after-discovered evidence not presented at trial entitling him to a new trial is: (1) the Chain of Custody Form, which showed that the victim's gun was turned over to law enforcement prior to trial, (2) the ruling in Taylor's PCR that his trial counsel was ineffective for not raising a *Brady* violation in connection with law enforcement's failure to disclose the receipt of the victim's gun, (3) the testimony of Taylor at his plea and at the evidentiary hearing that he was shooter and the party responsible for the victim's death, (4) the gun registration form for a .380 caliber HI Point

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handgun, which matched the type and caliber of bullets retrieved from the victim's body, and (5) the testimony of trial counsel that the evidence was material and outcome determinative.

The Court will address each of these assertions.

1. The Chain of Custody form which shows that the victim's gun turned over to law enforcement prior to trial. Evans admits in his brief that during the trial it came out that the victim's father surrendered a .45 caliber handgun to law enforcement sometime before trial. Officer Dellinger also testified to this fact. At that time Evans would be on notice of the existence of the weapon and appropriate steps could have been taken to learn when it was surrendered to the police. The Evidence Receipt introduced at the PCR hearing could have been discovered by due diligence. The burden is on the defendant to show that the after discovered evidence could not have been discovered by the exercise of due diligence prior to trial. *State v. Kelly*, 285 S.C. 373, 329 S.E.2d 442 (1985), *State v. Jones*, 89 S.C. 41, 71 S.E. 291, (1911), The Chain of Custody form would have come to light and the Defendant could have moved for a mistrial or dismissal based on a violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

Additionally, the .45 caliber pistol is apparently linked to the victim and would be relevant only to an assertion at trial of self-defense which was apparently not raised and no jury instruction requested. The issue is one for PCR consideration for ineffective assistance of counsel and does not meet the third prong of *State v. Spann, supra*, that the evidence could not in the exercise of due diligence have been discovered. Neither does it meet the first test that it probably would have changed the result nor the fourth test of materiality.

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2. Prior Court ruling in Co-Defendant's (Taylor's) PCR case that counsel was ineffective for not raising a *Brady* violation for not questioning law enforcement's failure to disclose receipt of the victim's gun. The ruling of the Court in Taylor's PCR is neither conclusive nor precedent for a different circuit court judge in Evans' case. One circuit court judge does not have the authority to set aside the ruling or finding of another. *Enoree Baptist Church v. Fletcher*, 287 S. C. 602, 340 SE2d 546 (1986). Similarly, the conclusions or orders of one circuit court judge are not binding on another. Each circuit court judge is free to make independent findings of fact based on a number of factors, including the judge's view of the credibility and weigh of the evidence. The matter of credibility of after discovered evidence offered in support of a motion for a new trial is a matter for determination by the trial judge to whom it is offered. *State v Wright*, 269 S.C. 421, 237 S.E.2d 764 (1977). Thus this evidence is not material and is not such that would probably change the result. *Spann, supra*.
  
3. Taylor's testimony at his plea hearing that he was the shooter. Evans' characterizes this as a "confession" and cites the U.S. Supreme Court case *Arizona v. Fulminate*, 499 U.S. 279 (1991) and the two dissenting opinions in *Johnson v. Catoe*, 345 S. C. 389, 548 SE2d 587 (2001) for support. The majority in *Johnson* held that the evidence would not change the result. The "confession" in *Johnson* was not an admission by a Co-Defendant but an eye witness providing a new version of her previous statement. Moreover, the statement and admission of Taylor (that he was the shooter) at his guilty plea hearing eight and on-half (8 ½) years after his conviction in return for a negotiated sentence of time served was clearly motivated by his desire to be released from incarceration. Even though under oath, it can hardly be said that the statement was a free and voluntary expression unmotivated by the promise of benefit or reward. The credibility of this "confession" is for this Court to determine. *State v. Wright, supra, State v.*

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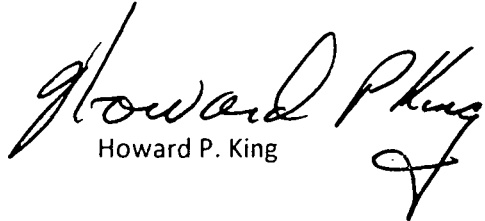
*Deese*, 266 S.C. 534, 225 S.E.2d 175 (1976). It has been held that recantation of testimony ordinarily is unreliable and should be subjected to close scrutiny. *State v. Mayfield*, 235 S.C. 11, 109 S.E.2d 716 (1959). Even though Taylor did not recant previous testimony he had a definite bias to make a self-serving statement at his guilty plea, i.e. a negotiated sentence of time served resulting in his immediate release, and his statements should be carefully scrutinized. The evidence, while meeting the test as having occurred after trial, is not such that likely would have changed the result.

4. Gun registration form of .380 caliber handgun matched the type and caliber of bullets found in the victim's body. Ten .380 caliber bullets were found at the scene. Two bullets were found in the victim's body (both from the same pistol). The source of all of the .380 caliber the bullets is unexplained except for Taylor's statement at his guilty plea hearing. It is clear that there were shots from three .380 caliber pistols, none of which were ever found. Evans' argument ignores the theory of accomplice liability-the hand of one is the hand of all-which was presented at trial. The registration form simply ties Taylor to one of the .380 caliber pistols. It is not such that would probably change the outcome of the trial.
5. Testimony of trial counsel that evidence was material and outcome determinative. At attorney, especially a respected one like Bryan Doby, is entitled to an expert opinion on this issue and his opinion is entitled to weight. However, the finder of fact, in this case the Court, is free to accept or reject that opinion based on its view of the facts. This Court disagrees with Doby that all of the evidence is material and would probably affect the outcome.

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Conclusion

The evidence claimed by Evans to be after discovered evidence entitling him to a new trial under Rule 26(b) SCRCrimP does not meet the test of *State v. Spann*, 334 S.C. 618, 513 S.E.2d 98 (1999). Therefore, the motion for new trial is DENIED.

  
Howard P. King

Circuit Court Judge (Active/Retired)

Sumter, S.C.

November 15, 2010

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**LAW OFFICE OF TRICIA A. BLANCHETTE**

November 29, 2010  
VIA HAND DELIVERY

The Honorable Tanya A. Gee  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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RE: State v. Marcus Evans; Docket No.: 2000-GS-31-0010

**SC Court of Appeals**

Dear Ms. Gee:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent.
- (2) A copy of the order which is to be challenged on appeal.

Yours truly,  
  
Tricia A. Blanchette  
Attorney at Law

cc: John R. Gentry, Assistant Solicitor for the 3<sup>rd</sup> Judicial Circuit  
Marcus Evans

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